

## **Summary of GAO Engagement on UIC Injection Well Enforcement (Code 361614)**

### Stated Purpose:

At the request of the Senate Committee on Environment and Public Works, GAO is initiating an investigation of EPA and State enforcement of Class II well violations.

### July 27, 2014 Report: GAO-14-555

This investigation is following work that GAO has already started. GAO issued a report, release on July 28, 2014, that examined 1) EPA and state roles, responsibilities, and resources for the UIC program, 2) UIC program safeguards to protecting drinking water, 3) EPA oversight and enforcement of Class II programs, and 4) the reliability (i.e., complete and comparable) of the UIC program data for reporting national numbers.

The July report recommended that EPA review emerging risks relating to Class II program safeguards and ensure that it can effectively oversee and enforce Class II programs. This report is located at the following link:

<http://www.gao.gov/products/GAO-14-555>.

### Schedule:

1. The entrance conference with EPA HQ (OECA & OW) and GAO was held on December 2 from 10am to 11am in Room 6530 north.
2. GAO was scheduled to meet with region 3 on December 3.
3. GAO plans to meet with other regions and states in the coming weeks.

### **Summary of Information requested:**

#### Key Questions:

1. What is known about the enforcement actions EPA and the states have taken in response to Class II well violations?
2. How do EPA and select states track violations and use the information to take enforcement actions?
3. How and when does EPA get involved in state enforcement actions?

#### Other Information:

For this investigation, GAO plans to work with EPA HQ (both OECA & OGWDW) and regions as well as the states of California, Colorado, Kentucky, North Dakota, Ohio, Oklahoma, Pennsylvania and Texas. GAO has provided EPA with a list of 28 questions (see attached). OECA staff is currently working on answers to the questions regarding enforcement in DI states (where EPA runs the program).

**Questions for Entrance Conference with EPA**

**Injection Well Enforcement (361614)**

**12/02/14**

**Enforcement Actions for Direct Implementation States**

1. In direct implementation states, can you briefly describe EPA's process for enforcement of violations through:
  - a. shut-ins
  - b. administrative orders
  - c. consent agreements
  - d. civil penalty
  - e. criminal penalty
  - f. forfeiture of bonding or financial assurance
  - g. pipeline severance
  - h. cease and desist orders
  - i. permitting moratoriums / blacklists
2. Does the diagram we provided accurately reflect the steps EPA regions can take to enforce violations in direct implementation states?
  - a. Please describe any additional enforcement mechanisms available to EPA regions that we didn't identify.
  - b. Please describe OECA's and the Department of Justice's role in these processes, if any.
3. What are the minimum and maximum fines EPA regions can levy for violations of Class II regulations?
  - a. Please describe the process and criteria that EPA regions use to determine fine amounts?
  - b. In your opinion, are the maximum daily and overall fines for violations a sufficient deterrent to illegal activities by operators?
4. What types of informal mechanisms do officials in EPA regions use to resolve Class II well violations?

- a. Generally, how long of a grace period do operators have before Region 3 takes formal enforcement action?
5. Are there any enforcement mechanisms that are not available to EPA regions that could make enforcement more effective?
6. Please describe the public notice / hearings process for enforcement actions in direct implementation states.
  - a. Which enforcement actions require a public hearing?
7. How does the appeals process work for both administrative and civil/criminal penalties in direct implementation states?
8. Guidance 75 and 79 lay out criteria that Regional programs should use when determining settlement agreements with operators for UIC program violations. Can you describe the process that EPA regions use when determining acceptable settlements with violators entering into consent orders or agreements with EPA?
  - a. Under what conditions are consent orders/agreements a favorable outcome?
9. If an emergency action is required to resolve a violation, how does the enforcement process change?
  - a. Do regional personnel consult with OECA and GC staff immediately?
  - b. What steps should EPA regions take to ensure that the violation is remedied as quickly as possible?
10. Under what conditions should EPA regions pursue a civil or criminal penalty?
  - a. Are there set criteria that the regions uses to determine when a civil or criminal actions are warranted?
  - b. How do region officials coordinate with GC and OECA when determining whether to pursue a civil or criminal penalty?

#### Tracking Violations and Enforcement in Direct Implementation States

11. For direct implementation states, do EPA regions have set criteria for what information should be tracked on violations and enforcement?
12. Are EPA regions required to have databases to identify violators that have not met compliance deadlines?
13. How are enforcement actions tracked on the 7520? Are they only reported in the year in which the enforcement action is initiated, or are they included on the 7520 until the violation is resolved?
  - a. Are all well shut-ins and criminal or civil referrals included in 7520 reporting? Are there any scenarios where they wouldn't be included? Please explain.

14. Under what circumstances are violations referred to OECA or DOJ for enforcement or litigation?
15. Does OECA have prioritization model for UIC enforcement cases similar to the models used for other SDWA and CWA programs? Why or why not?
  - a. What information does OECA collect to help determine whether a UIC enforcement case should be prioritized?
16. Does OECA set specific enforcement goals direct implementation UIC programs?

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#### Federal oversight and enforcement of state program requirements

17. Is there a protocol or guidance that program officials use to determine whether EPA should intervene to enforce violations of state Class II requirements?
  - a. What scenarios would require regions to step in to take enforcement actions on behalf of a state-implemented program?
18. Can you provide any examples in the last 5-10 years where regions intervened or considered intervening on behalf of a state program to take enforcement actions?
19. Do primacy states have set criteria for what information should be tracked on violations and enforcement? Please describe.
20. Is the information on enforcement activities provided by states to regions sufficient to identify scenarios where EPA intervention is warranted?
  - a. What additional information would be useful?
  - b. Why is this information not available?
21. Does OECA handle all intervention in state enforcement actions, or do some regional drinking water programs have the capability to take action themselves?
  - a. Does this vary region to region?
22. Does OECA set specific enforcement goals for state implemented UIC programs? If so, what are they?

#### Aquifer Exemptions

23. Has EPA completed the national database of aquifer exemptions? If so, please provide a copy of the database to GAO?
24. Given Region 9's recent findings in California that operators may be injecting into USDWs that were incorrectly permitted as exempt, does EPA plan to conduct similar studies in other states?

- a. How did EPA determine that California may have incorrectly permitted injection into non-exempt USDWs?
  - b. Are there other states that have not clearly delineated the boundaries of their aquifer exemptions for permitting purposes? Has EPA prioritized similar studies in these states?
25. Has California fully complied with all of the information requests from EPA's July letter? If not, what additional information needs to be provided?

#### Report Status Updates and Information Requests

26. What is the status of EPA's Hydraulic Fracturing and Drinking Water report? What is the schedule for the next set of deliverables?
27. What is the status of the Technical Working Group's induced seismicity report? When will the report be finalized and released?
28. Previously, we requested all Class II 7520 2A and 2B forms from 2008 to 2012. Given the large amount of enforcement data available on the 7520s, we would like to request 2013 and 2014 7520 2A and 2B forms/data from the following states:
- a. Kentucky
  - b. Ohio
  - c. California
  - d. Colorado
  - e. North Dakota
  - f. Texas
  - g. Oklahoma

In addition, we would like to request the following missing 7520 2A and 2B forms from each state between 2008 and 2012.

- a. Kentucky – 2011, 2012
- b. Ohio - 2009
- c. California - 2008
- d. Colorado - 2010
- e. North Dakota - 2008
- f. Oklahoma -2008, 2012

